

UNITED STATES DISTRICT COURT

for the
Western District of Washington

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

Information associated with Facebook Account (FBID)
100007111094057, with user name David Hinojosa, that
is stored at premises controlled by Facebook.

Case No. MJ17-193

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A, attached hereto and incorporated by reference.

located in the Northern District of California, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, attached hereto and incorporated by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☐ evidence of a crime;
☐ contraband, fruits of crime, or other items illegally possessed;
☐ property designed for use, intended for use, or used in committing a crime;
☒ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
18 U.S.C. § 3583

Offense Description
Violation of Supervised Release

The application is based on these facts:

See Affidavit of United States Marshal Erik Kosec, attached hereto and incorporated herein by reference.

- ☒ Continued on the attached sheet.
☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



Applicant's signature

Erik Kosec, Deputy United States Marshal

Printed name and title

The above-named agent provided a sworn statement attesting to the truth of the foregoing affidavit by telephone on this 10th day of May, 2017.

Date: 5/10/17



Judge's signature

City and state: Seattle, Washington

Brian A. Tsuchida, United States Magistrate Judge

Printed name and title

AFFIDAVIT

STATE OF WASHINGTON)
) ss
 COUNTY OF KING)

I, Erik Kosec, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for certain information associated with Facebook account (FBID) 100007111094057, with the user name David Hinojosa, stored at premises owned, maintained, controlled, or operated by Facebook, a social networking company headquartered in Menlo Park, California. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Facebook to disclose to the government copies of the information (including the content of communications) further described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B. This application for a search warrant is presented electronically pursuant to Local Criminal Rule CrR41(d)(3).

2. I am a Deputy United States Marshal and have been employed by the United States Marshals Service (USMS) for approximately three years. In 2017, I was assigned to the USMS-sponsored Pacific Northwest Violent Offender Task Force (PNVOTF). I operate out of the United States Courthouse in Seattle, Washington. My training has included attending the Criminal Investigators Training Program at the Federal Law Enforcement Training Center, as well as the Basic Deputy United States Marshal Course and the High Risk Fugitive Apprehension (HRFA) training in Glynco, Georgia. I have been the case agent on prior fugitive cases. I have used various methods

1 to conduct in-depth investigations to locate fugitives. I have received training and
2 experience involving criminal investigations and electronic surveillance.

3 3. The facts in this affidavit come from my personal observations, my training
4 and experience, and information obtained from other agents and witnesses. This affidavit
5 is intended to set forth the facts relevant to the determination of probable cause for the
6 requested warrant, and does not set forth all of my knowledge about this matter.

7 4. Based on my training and experience and the facts set forth in this affidavit,
8 I believe there is probable cause to search the information described in Attachment A for
9 evidence of David Hinojosa's location.

10 THE INVESTIGATION

11 5. On February 6, 2009 David Hinojosa was sentenced to 72 months
12 imprisonment, followed by 3 years of supervised release, after being convicted of Felon
13 in Possession of a Firearm, in violation of Title 18, United States Code, Sections
14 922(g)(1) and 924(a)(2), United States v. David Hinojosa, 2:08-CR-00190TSZ-001.

15 6. Hinojosa's first term of supervised released commenced on February 20,
16 2014. After multiple violations Hinojosa's supervised release was revoked on August 25,
17 2016. This date also marks the first day of Hinojosa's second term of supervised release.

18 7. On November 3, 2016 Hinojosa's supervised release was again revoked, for
19 which he then received a sentence of 30 days imprisonment and 12 months of supervised
20 release. An additional condition of this supervised release required Hinojosa to reside at a
21 Residential Re-entry Center (RRC) for up to 120 days.

22 8. Hinojosa was released from custody on November 10, 2016, but failed to
23 report to the RRC by November 14, 2016, as directed.

24 9. On November 15, 2016, an arrest warrant for Hinojosa was issued for
25 Violation of Conditions of Supervised Release.

1 10. Hinojosa has not self-surrendered or contacted law-enforcement to resolve
2 the warrant. Law-enforcement agents have made attempts to locate Hinojosa without
3 success.

4 11. It appears that Hinojosa has a Facebook account in the name "David
5 Hinojosa" with the user ID of 100007111094057. Deputy U.S. Marshal Kosec has
6 reviewed the profile picture and other pictures on this account, and believes that they
7 match Hinojosa's booking photos. Deputy U.S. Marshal Kosec believes that Hinojosa
8 continues to access his Facebook account because his Facebook newsfeed shows posts as
9 recent as March 2, 2017.

10 12. I believe that information contained in Hinojosa's Facebook account will
11 assist in the location and apprehension of Hinojosa. For example, internet protocol (IP)
12 addresses that Hinojosa has used to access the account may be used to determine
13 Hinojosa's physical location. Communications between Hinojosa and others contained in
14 the account may identify locations at which Hinojosa has been and/or is planning to be,
15 and will identify persons with whom Hinojosa is in contact, who may have knowledge of
16 his whereabouts. Additionally, photographs contained in the account may depict places
17 that Hinojosa has been, and may be used to identify persons with whom Hinojosa has
18 been in contact, who may have knowledge of his whereabouts.

19 FACEBOOK SOCIAL NETWORKING SERVICES

20 13. Facebook owns and operates a free-access social networking website of the
21 same name that can be accessed at <http://www.facebook.com>. Facebook allows its users
22 to establish accounts with Facebook, and users can then use their accounts to share
23 written news, photographs, videos, and other information with other Facebook users, and,
24 sometimes, with the general public.

25 14. Facebook asks users to provide basic contact and personal identifying
26 information, either during the registration process or thereafter. This information
27 includes the user's full name, birth date, gender, contact e-mail addresses, Facebook

1 passwords, Facebook security questions and answers (for password retrieval), physical
2 address (including city, state, and zip code), telephone numbers, screen names, websites,
3 and other personal identifiers. Facebook also assigns a user identification number to each
4 account.

5 15. Facebook users may join one or more groups or networks to connect and
6 interact with other users who are members of the same group or network. Facebook
7 assigns a group identification number to each group. A Facebook user can also connect
8 directly with individual Facebook users by sending each user a "Friend Request." If the
9 recipient of a "Friend Request" accepts the request, then the two users will become
10 "Friends" for purposes of Facebook and can exchange communications or view
11 information about each other. Each Facebook user's account includes a list of that user's
12 "Friends" and a "News Feed," which highlights information about the user's "Friends,"
13 such as profile changes, upcoming events, and birthdays.

14 16. Facebook users can select different levels of privacy for the
15 communications and information associated with their Facebook accounts. By adjusting
16 these privacy settings, a Facebook user can make information available only to himself or
17 herself, to particular Facebook users, or to anyone with access to the Internet, including
18 people who are not Facebook users. A Facebook user can also create "lists" of Facebook
19 friends to facilitate the application of these privacy settings. Facebook accounts also
20 include other account settings that users can adjust to control, for example, the types of
21 notifications they receive from Facebook.

22 17. Facebook users can create profiles that include photographs, lists of
23 personal interests, and other information. Facebook users can post "status" updates about
24 their whereabouts and actions, as well as links to videos, photographs, articles, and other
25 items available elsewhere on the Internet. Facebook users can also post information
26 about upcoming "events," such as social occasions, by listing the events' time, location,
27 host, and guest list. In addition, Facebook users can "check in" to particular locations or
28

1 add their geographic locations to their Facebook posts, thereby revealing their geographic
2 locations at particular dates and times. A user's profile page also includes a "Wall,"
3 which is a space where the user and his or her "Friends" can post messages, attachments,
4 and links that typically are visible to anyone who can view the user's profile.

5 18. Facebook allows users to upload photos and videos. It also provides users
6 the ability to "tag" (i.e., label) other Facebook users in a photo or video. When a user is
7 tagged in a photo or video, he or she receives a notification of the tag and a link to see the
8 photo or video. For Facebook's purposes, the photos and videos associated with a user's
9 account will include all photos and videos uploaded by that user that have not been
10 deleted, as well as all photos and videos uploaded by any user that have that user tagged
11 in them.

12 19. Facebook users can exchange private messages on Facebook with other
13 users. These messages, which are similar to e-mail messages, are sent to the recipient's
14 Facebook "Inbox," which also stores copies of messages sent by the recipient, as well as
15 other information. Facebook users can also post comments on the Facebook profiles of
16 other users or on their own profiles; such comments are typically associated with a
17 specific posting or item on the profile. In addition, Facebook has a Chat feature that
18 allows users to send and receive instant messages through Facebook. These chat
19 communications are stored in the chat history for the account. Facebook also has a Video
20 Calling feature, and, although Facebook does not record the calls themselves, it does keep
21 records of the date of each call.

22 20. If a Facebook user does not want to interact with another user on Facebook,
23 the first user can "block" the second user from seeing his or her account.

24 21. Facebook has a "like" feature that allows users to give positive feedback or
25 connect to particular pages. Facebook users can "like" Facebook posts or updates, as
26 well as webpages or content on third-party (i.e., non-Facebook) websites. Facebook
27 users can also become "fans" of particular Facebook pages.

1 22. Facebook has a search function that enables its users to search Facebook for
2 keywords, usernames, or pages, among other things.

3 23. Each Facebook account has an activity log, which is a list of the user's
4 posts and other Facebook activities from the inception of the account to the present. The
5 activity log includes stories and photos that the user has been tagged in, as well as
6 connections made through the account, such as "liking" a Facebook page or adding
7 someone as a friend. The activity log is visible to the user but cannot be viewed by
8 people who visit the user's Facebook page.

9 24. Facebook Notes is a blogging feature available to Facebook users, and it
10 enables users to write and post notes or personal web logs ("blogs"), or to import their
11 blogs from other services, such as Xanga, LiveJournal, and Blogger.

12 25. The Facebook Gifts feature allows users to send virtual "gifts" to their
13 friends that appear as icons on the recipient's profile page. Gifts cost money to purchase,
14 and a personalized message can be attached to each gift. Facebook users can also send
15 each other "pokes," which are free and simply result in a notification to the recipient that
16 he or she has been "poked" by the sender.

17 26. Facebook also has a Marketplace feature, which allows users to post free
18 classified ads. Users can post items for sale, housing, jobs, and other items on the
19 Marketplace.

20 27. In addition to the applications described above, Facebook also provides its
21 users with access to thousands of other applications on the Facebook platform. When a
22 Facebook user accesses or uses one of these applications, an update about that the user's
23 access or use of that application may appear on the user's profile page.

24 28. Some Facebook pages are affiliated with groups of users, rather than one
25 individual user. Membership in the group is monitored and regulated by the
26 administrator or head of the group, who can invite new members and reject or accept
27 requests by users to enter. Facebook can identify all users who are currently registered to

1 a particular group and can identify the administrator and/or creator of the group.
2 Facebook uses the term "Group Contact Info" to describe the contact information for the
3 group's creator and/or administrator, as well as a PDF of the current status of the group
4 profile page.

5 29. Facebook uses the term "Neoprint" to describe an expanded view of a given
6 user profile. The "Neoprint" for a given user can include the following information from
7 the user's profile: profile contact information; News Feed information; status updates;
8 links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists,
9 including the friends' Facebook user identification numbers; groups and networks of
10 which the user is a member, including the groups' Facebook group identification
11 numbers; future and past event postings; rejected "Friend" requests; comments; gifts;
12 pokes; tags; and information about the user's access and use of Facebook applications.

13 30. Facebook also retains Internet Protocol ("IP") logs for a given user ID or IP
14 address. These logs may contain information about the actions taken by the user ID or IP
15 address on Facebook, including information about the type of action, the date and time of
16 the action, and the user ID and IP address associated with the action. For example, if a
17 user views a Facebook profile, that user's IP log would reflect the fact that the user
18 viewed the profile, and would show when and from what IP address the user did so.

19 31. Social networking providers like Facebook typically retain additional
20 information about their users' accounts, such as information about the length of service
21 (including start date), the types of service utilized, and the means and source of any
22 payments associated with the service (including any credit card or bank account number).
23 In some cases, Facebook users may communicate directly with Facebook about issues
24 relating to their accounts, such as technical problems, billing inquiries, or complaints
25 from other users. Social networking providers like Facebook typically retain records
26 about such communications, including records of contacts between the user and the
27

1 provider's support services, as well as records of any actions taken by the provider or
2 user as a result of the communications.

3 32. Therefore, the computers of Facebook are likely to contain all the material
4 described above, including stored electronic communications and information concerning
5 subscribers and their use of Facebook, such as account access information, transaction
6 information, and other account information.

7 **INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED**

8 33. I anticipate executing this warrant under the Electronic Communications
9 Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by
10 using the warrant to require Facebook to disclose to the government copies of the records
11 and other information (including the content of communications) particularly described in
12 Section I of Attachment B. Upon receipt of the information described in Section I of
13 Attachment B, government-authorized persons will review that information to locate the
14 items described in Section II of Attachment B.

15 **REQUEST FOR NONDISCLOSURE AND SEALING**

16 34. I request, pursuant to the preclusion-of-notice provisions of Title 18, United
17 States Code, Section 2705(b), that Facebook be ordered not to notify any person
18 (including the subscriber or customer to which the materials relate) of the existence of
19 this warrant for such period as the Court deems appropriate. The government submits
20 that such an order is justified because notification of the existence of this Order would
21 seriously jeopardize the ongoing investigation. Such a disclosure would give the
22 subscriber an opportunity to destroy change patterns of behavior and to continue his
23 flight from prosecution

24 35. I further request that the Court order that all papers in support of this
25 application, including the affidavit and search warrant, be sealed until further order of the
26 Court. These documents discuss an ongoing fugitive investigation that is neither public
27 nor known to the target of the investigation. Accordingly, there is good cause to seal
28

1 these documents because their premature disclosure may seriously jeopardize the
 2 investigation by assisting the target's continued flight from prosecution.

3 CONCLUSION

4 36. Based on the forgoing, I request that the Court issue the proposed search
 5 warrant. This Court has jurisdiction to issue the requested warrant because it is "a court
 6 of competent jurisdiction" as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a),
 7 (b)(1)(A) & (c)(1)(A). Specifically, the Court is "a district court of the United States . . .
 8 that – has jurisdiction over the offense being investigated." 18 U.S.C. § 2711(3)(A)(i).
 9 Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not
 10 required for the service or execution of this warrant. Accordingly, by this Affidavit, I
 11 seek authority for the government to search all of the items specified in Section I,
 12 Attachment B (attached hereto and incorporated by reference herein) to the Warrant, and
 13 specifically to seize all of the data, documents and records that are identified in Section II
 14 to that same Attachment.



15
 16
 17 ERIK KOSEC
 18 Deputy United States Marshal
 19 United States Marshals Service
 20
 21

22 The above named agent provided a sworn statement attesting to the truth of the contents
 23 of the foregoing affidavit on the 10th day of May, 2017.



24
 25
 26 BRIAN A. TSUCHIDA
 27 United States Magistrate Judge
 28

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with the Facebook user ID 100007111094057, stored at premises owned, maintained, controlled, or operated by Facebook, a company headquartered in Menlo Park, California.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Facebook

To the extent that the information described in Attachment A is within the possession, custody, or control of Facebook, including any messages, records, files, logs, or information that have been deleted but are still available to Facebook, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Facebook shall disclose the following information to the government for the user ID listed in Attachment A:

- (a) All contact and personal identifying information, including full name, user identification number, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions and answers, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers.
- (b) All activity logs for the account and all other documents showing the user's posts and other Facebook activities;
- (c) All photos and videos uploaded by that user ID and all photos and videos uploaded by any user that have that user tagged in them;
- (d) All profile information; News Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; Friend lists, including the Friends' Facebook user identification numbers; groups and networks of which the user is a member, including the groups' Facebook group identification numbers; future and past event postings;

rejected “Friend” requests; comments; gifts; pokes; tags; and information about the user’s access and use of Facebook applications;

- (e) All other records of communications and messages made or received by the user, including all private messages, chat history, video calling history, and pending “Friend” requests;
- (f) All “check ins” and other location information;
- (g) All IP logs, including all records of the IP addresses that logged into the account;
- (h) All records of the account’s usage of the “Like” feature, including all Facebook posts and all non-Facebook webpages and content that the user has “liked”;
- (i) All information about the Facebook pages that the account is or was a “fan” of;
- (j) All past and present lists of friends created by the account;
- (k) All records of Facebook searches performed by the account;
- (l) All information about the user’s access and use of Facebook Marketplace;
- (m) The types of service utilized by the user;
- (n) The length of service (including start date) and the means and source of any payments associated with the service (including any credit card or bank account number);

- (o) All privacy settings and other account settings, including privacy settings for individual Facebook posts and activities, and all records showing which Facebook users have been blocked by the account;
- (p) All records pertaining to communications between Facebook and any person regarding the user or the user's Facebook account, including contacts with support services and records of actions taken.

II. Information to be seized by the government

The following information described above in Section I that relates to the ongoing fugitive investigation involving David Hinojosa, for the user ID identified on Attachment A:

- (a) Any content including e-mails, messages, texts, photographs, visual images, documents, spreadsheets, address lists, contact lists or communications of any type that identify the user, and his or her location at any time since February 01, 2017.
- (b) All records relating to who created and used the user ID, and all records identifying any person with whom the user has been in contact at any time since February 01, 2017.
- (c) All subscriber records associated with the specified account, including name, address, local and long distance telephone connection records, records of session times and durations, length of service (including start date) and types of service utilized, telephone or instrument number or other subscriber number or identity, including any temporarily assigned network

address, and means and source of payment for such service including any credit card or bank account number.

(d) Any and all other log records, including IP address captures, associated with the specified account.

(e) Any records of communications between Facebook and any person about issues relating to the account, such as technical problems, billing inquiries, or complaints from other users about the specified account. This to include records of contacts between the subscriber and the provider's support services, as well as records of any actions taken by the provider or subscriber as a result of the communications.